

FINAL DECISION RECORD FOR ENVIRONMENTAL ASSESSMENT NM-060-00-041 FOR ALLOTMENT 63098

On July 24, 2000 the Roswell Field Office (RFO) received a protest of the proposed Decision Record to renew the term grazing lease for Allotment 63098 from Forest Guardians. Upon a review of the protest the RFO determined the protest was timely and with standing. Under the provisions of 43 CFR 4160.2 and 4160.3, the Authorized Officer shall review the proposed decision, in light of the protestant's statement of reasons and other pertinent information, and issue a final decision.

This protest also contained references to issues that are outside the jurisdiction of the RFO. These include reference to the requirements of the Multiple Use Sustained Yield Act which the U. S. Forest Service operates under. This is not germane to the allotment in question (63098) and will not be considered.

In summary, the protest claims the Bureau of Land Management (BLM) RFO violated the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA) and the fundamentals of rangeland health as outlined in 43 CFR 4180.1. The Protestor asks that BLM discard the proposed decision; begin the process to prepare an environmental impact statement to address permit and lease renewals for this and other allotments; and not permit livestock grazing on this allotment until the process is complete.

Under Section II of the protest, the Protestor made five claims that are broad in scope and lack specificity to this Environmental Analysis and Proposed Decision Record. These include:

1. The protest claims that BLM violated NEPA by not preparing an EIS to determine lands where livestock grazing is suitable. To support this claim, the protest makes several supporting statements. These include:

"Because neither 43 CFR 4110.1-1, nor any existing land use plan dictate whether or how much livestock grazing should be authorized on these lands, [BLM] . . . Must make its own informed and reasoned determination . . ."

[BLM has] "deliberately refused to consider the most important determinant of grazing's impact on the environment: the number of cattle it would permit to graze."

[BLM has] "refused to open to public review and comment its determination of the number of cattle that will be grazing under the one grazing strategy it analyzed and the basis for its conclusion that this determination would have no significant impact on the environment."

"We simply question whether that data takes into consideration the needs of non-livestock values. Thus, the most important decision for the allotments, the number of cows and the season of use, will be made without any real public scrutiny."

After a review of the Environmental Analysis (EA) and the Proposed Decision Record (DR), the BLM RFO offers the following:

43 CFR 4110.1-1 refers to grazing on lands acquired by BLM. This section of the regulations deals with the qualifications for a grazing permit/lease on acquired lands. The allotment in

question here does not contain any acquired lands as defined by this section. This is not germane to this issue.

The statement that no existing land use plan authorizes livestock grazing is in error. The Approved Roswell Resource Management Plan (RMP) (October 1997) carried forward the determination the public lands are suitable for livestock grazing (See page 30 and Appendix 8). Both the East Roswell Environmental Impact Statement (1979) and the West Roswell Management Framework Plan (MFP) (1984) analyzed livestock grazing on the public lands within the RFO and determined that the overall level of livestock grazing is consistent with the resource values. Furthermore, the RMP provides for the level of permitted use within an allotment to be adjusted (either an increase or decrease) based on monitoring data.

The determination that the public lands were suitable for livestock grazing was made in the East Roswell EIS and the West Roswell Management Framework Plan (MFP). Further, the MFP and EIS analyzed the impacts of livestock numbers and the effects of grazing on the public lands; these documents also analyzed a range of alternatives, including the elimination of grazing. Both the earlier documents and the subsequent RMP that replaced it were subject public review and comment. It is a matter of record that the Protestor commented on the Draft RMP and protested the Proposed RMP decisions.

Prior to developing the EAs for the permit/lease renewals, the RFO held five public scoping meetings in July 1998. Between July 1998 and May 1999, RFO periodically published a newsletter that tracked the progress of the permit/lease renewal process and progress on the EA development, and that discussed issues concerning the permit/lease renewals. Copies of this newsletter were sent to the Protestor. The Protestor states that grazing determinations will be made without public scrutiny and this is not supported by the record.

2. The protest claims that BLM violated NEPA by failing to address stocking rates as the most significant factor of impacts on resources. In support of this claim, the protest makes the following supporting statements:

" . . . [the EA] fails to evaluate the most relevant factor of all: the number of cattle to be permitted to graze."

"It is self-evident, however, that the approximate locations and numbers of cattle permitted on the allotments . . . is the most significant factor in determining the environmental effects of grazing."

After a review of the Environmental Analysis (EA) and the Proposed Decision Record (DR), the BLM RFO offers the following:

The EA is specific to the allotment it analyzes and does state the permitted livestock numbers allowed to graze within the allotment. Allotment specific analysis of livestock grazing and permitted livestock numbers show that the location of the livestock is within the allotment boundaries.

The level of permitted use for this allotment (63098) is stated on page 3 of the EA under the Proposed Action and is as follows:

1 AU year-long for 12 Animal Unit Months (AUMs) at 100% Public Land Active Use

The original determinations of stocking rates and suitability for year-long grazing were made in the East Roswell Grazing EIS and the Roswell MFP Amendment/EIS. The Roswell RMP carried forward those determinations and the EA is tiered off the RMP. This tiering is permitted by NEPA and allows an agency to analyze impacts.

3. The protest claims that BLM's Proposed Decision violates NEPA because the EA failed to analyze a range of reasonable alternatives. To support this claim, the protest makes several supporting statements.

"Having failed to consider alternative stocking rates, which is clearly 'necessary to permit a reasoned choice,' . . . The BLM's proposed decision must be withdrawn and a new analysis issued."

". . . BLM must consider a reasonable range of alternatives, including a no action alternative."

After a review of the Environmental Analysis (EA) and the Proposed Decision Record (DR), the BLM RFO offers the following:

Since grazing suitability has been determined and alternatives have been analyzed in previous land use planning documents to which these EAs are tiered, RFO has already met the requirement of analyzing a range of alternatives necessary to permit a reasoned choice. Further, given the conditions of the allotment in question, RFO contends it has already considered a reasonable range of alternatives in the EA, based on the existing conditions, issues and conflicts within this allotment. It is not necessary to consider reducing the permitted number of livestock if the reduction is not germane to existing conditions.

The NEPA process does not require voluminous information and time consuming analysis of alternatives that would not be feasible to implement. NEPA requires that a range of reasonable alternatives be considered. The elimination of grazing was considered as an alternative. The fact that livestock grazing already has been shown to be an appropriate use of the public lands coupled with the economic, social and resource management effects narrows the need of detailed analysis of alternatives presented in the EA.

4. The protest claims that BLM violates NEPA when it did not prepare an EIS for significant and connected actions. To support this claim, the protest makes this statement:

"The EIS must evaluate the actual environmental effects of particular grazing permits in specific areas . . . and must include the detailed analysis of local geographic conditions necessary for the decision maker to determine what course of action is appropriate under circumstances."

After a review of the Environmental Analysis (EA) and the Proposed Decision Record (DR), the BLM RFO offers the following:

In addition to the responses to the previous claims, NEPA allows for the development of an EA analyzing the impacts resulting from the proposed action. With a finding of no significant impacts, preparing an EIS is not necessary. The protest presents no facts or evidence that this finding is in error. The protest does not support this claim.

5. The protest claims that the cumulative impact analysis is inadequate. To support this claim the protest makes these statements:

"It [BLM] must analyze the cumulative effects of 100 years or more of livestock grazing on the allotment and other allotments for which NEPA analysis is concurrently conducted."

"BLM does not *even* [emphasis added] provide a cursory discussion of the cumulative impacts of the action on riparian systems, it does not *even* [emphasis added] mention the cumulative effects of livestock grazing on riparian habitat. Even if cumulative effects are difficult to assess they can not be dismissed."

After a review of the Environmental Analysis (EA) and the Proposed Decision Record (DR), the BLM RFO offers the following:

The EA acknowledges livestock grazing has occurred on this and other allotments during the past century, and attempts to describe the same impacts on the surrounding allotments. See page 8 of the EA for reference and discussion of the cumulative impacts resulting from this proposed action.

Here again, the protest fails to be specific. There are general statements, strung together without specific comments on the substance of the EA.

Under Section III, the protest claims RFO fails to analyze a no grazing alternative as well as a range of alternatives with varying stocking rates and, therefore, BLM violates FLPMA by failing to choose a level of grazing that will best meet the present and future needs of the American people.

To support this claim, the protest states:

"... the BLM must consider that there are hundreds of millions of acres of both private and public lands in the nation that provide better forage for cattle than do the arid and rolling hills. But resources on BLM lands such as habitat for desert bighorn, elk, deer, and antelope, and the cottonwood-willow forests and its many threatened, endangered species are incredibly scarce."

"There is no question that livestock grazing has permanently degraded the productivity of our riparian zones, native fisheries, grasslands and forests. The proposed decisions to approve the permits in question fail to recognize this prohibition and will continue to impair the long-term productivity of riparian areas."

After a review of the Environmental Analysis (EA) and the Proposed Decision Record (DR), the BLM RFO offers the following:

FLPMA requires BLM to protect resources on public lands while simultaneously making some of those resources available for use. RFO has attempted to strike that balance required by FLPMA by fulfilling the requirements of NEPA. Other than the general statements cited here, the protest presents no evidence or data that RFO is in error.

In regards to Threatened and Endangered (T&E) species, RFO has consulted with the US Fish & Wildlife Service, resulting in a no jeopardy opinion on the RMP (See the Biological Opinion of the Roswell RMP (Cons. #2-22-96-F-102, May 1997); letter from USFWS to RFO, dated April 1998). In the case of the current permit/lease renewal process, allotments were grouped by community

type (i.e. Grassland, Mixed Desert Shrub, Shinnery Oak Dune, Pinon-Juniper or Riparian) for consultation with the US Fish & Wildlife Service.

The protest claims that the fundamentals of rangeland health have been violated.

The protest asserts:

"We also believe the [proposed] decisions fails to comply with the fundamentals of rangeland health . . . because of the poor condition of the riparian habitat and the decision to allocate 99% of the forage to cattle, thereby causing harm to the state endangered desert bighorn, we believe the decision violates to the fundamentals of rangeland health."

After a review of the Environmental Analysis (EA) and the Proposed Decision Record (DR), the BLM RFO offers the following:

The protest does not offer any data or other information (other than belief) that could lead RFO to re-examine the documents for violations of the fundamentals of rangeland health.

Desert bighorn does not habituate the allotments within RFO boundaries nor does this allotment have any riparian habitat, therefore, the reference to the species or riparian habitat is irrelevant. The monitoring and allotment evaluation methodologies and procedures used by the RFO preclude the allocation of forage in excess of 45 percent of the available forage to livestock grazing. Therefore the claim that the RFO allocates 99 percent of the forage to livestock is in error.

The protest does not define poor condition in the light of the data presented in the EA. Similarly, the protest does not define adequate protection. Neither does the protest provide data nor specific information that would lead RFO to conclude it had erred in some manner.

After an extensive review of the protest and the EA analyzing the impacts of renewing the term grazing permit/lease, the RFO concludes the protest from the Protestor does not show that the RFO erred in the preparation of the EA, either in process of public involvement or the analyses of the impacts. Therefore the Final Decision in this matter is to:

Offer a ten-year livestock grazing lease for public lands on Allotment 63098 to Joe and Sandra Barraza as described in the Proposed Action of Environmental Assessment NM-060-00-041 (EA). Permitted use will be as follows:

1 AU year-long for 12 Animal Unit Months (AUMs) at 100% Public Land Active Use

An AU is equivalent to 1 cow. The term of the offered lease is from October 1, 2000 to February 28, 2010.

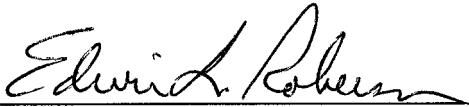
Through the Rangeland Reform '94 initiative, the BLM developed new regulations for grazing administration on public lands. With public involvement, fundamentals of rangeland health were established and written into the new regulations. The fundamentals of rangeland health are identified in

43 CFR §4180.1, and pertain to (1) watershed function; (2) ecological processes; (3) water quality; and (4) habitat for threatened, endangered, and other special status species. Based on available data and professional judgement presented in the EA, the fundamentals of rangeland health exist on Allotment 63098.

Pursuant to the provisions of 43 CFR 4.21, 4.470 and 4160.4 you are allowed 30 days from the receipt of this Final Decision in which to file an appeal to the Field Office Manager for the purpose of a hearing before an Administrative Law Judge. Your appeal must state clearly and concisely in writing the reason(s) why you think the final decision is in error.

To receive consideration for staying the implementation of this decision, you must specify how you would be harmed if the stay were not granted. If a petition for stay is not granted the decision will be put into effect following the 30 appeal period. Appeals can be filed at the following address:

Field Office Manager
Bureau of Land Management
Roswell Field Office
2909 West Second Street
Roswell, NM 88201



Edwin L. Roberson
Roswell Field Office Manager

August 11, 2000
Date